(2) (4)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CRIMINAL APPEAL NO. 672/2005

APPELLANT (IN JAIL) : Karan Singh,S/o.Hinchha Ram, Dhuri aged about 30Years, R/o. Makeshwar Ward Dhamtari Thana & Dist. Dhamtari (C.G.),

VERSUS

RESPONDENT : State of Chhattisgarh Through P.S. Kotawali Dhamtari

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

(25) A.F.R. 20.02.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.672/2005

Karan Singh

-Versus-

State of Chhattisgarh

Present:-
Appellant by Shri Arun Kochar, Advocate.
State by Shri Ashish Shukla, Govt. Advocate/Additional Public Prosecutor.

JUDGMENT

(Delivered on 20/02/2006)

1. This appeal is directed against the judgment dated 16.8.2005 delivered by Smt Maitrae Mathur, Special Judge, Raipur in special Criminal Case No. 41/2002 whereby the appellant was convicted U/S 20(b)(i) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act') and was sentenced to undergo rigorous imprisonment for 3 years and a fine of Rs. 25,000/- and in default of payment of fine to undergo rigorous imprisonment for 6 months.

2. Briefly stated the prosecution story is that on 6.4.2002, the Asstt. Sub Inspector, District Crimes Squad, Dhamtari Shri Ashok Dwivedi P.W. 3 received secret information that two persons, in unauthorized possession of ganja were going towards Makeshwar Ward. After completion of necessary legal formalities, he reached the Makeshwar Ward along with witnesses Chabilal P.W. 1, Santosh P.W. 2 and police staff. Near the public utility in

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Makeshwar Ward, the appellant who was carrying a white plastic bag in his hand was apprehended. After serving the appellant with a notice under Section 50 of the Act, the bag in possession of the appellant was searched. It was found to contain Ganja like substance. Upon weighing, the substance of the bag was found to be 5kg and 200gms. Two samples of 100gms each were taken and were sealed. The bag and the two samples were seized vide Ex.P-5 as also on 6.4.2002, and on the same day were entrusted for safe custody in the Malkhana P.S. City Kotwali, Dhamtari vide Ex.P-13 (C). A specimen impression of the seal used to seal the samples was also entrusted for safe custody. On the same day vide memo Ex.P-15 of the Superintendent of Police, Dhamtari the white plastic bag and the two sample packets were sent for analysis to the Forensic Science Laboratory, Raipur through Constable Bheesham Singh Netam. These articles were received in the F.S.L., Raipur on 8.4.2002. Vide report dated 18.4.2002, the Forensic Science Laboratory opined that all the 3 packets which were sent for chemical analysis contained Ganja. After completion of investigation, the appellant was prosecuted under Section 20(b)(i) of the Act.

3. The appellant abjured the guilt and pleaded innocence. The prosecution examined two independent witnesses Chabilal P.W. 1 and Santosh P.W. 2, A.S.I. Ashok Dwivedi P.W. 3, Malkhana Moharrir Rathram Patel P.W. 4., D.S.P. Ashok Pipare P.W. 5 and Constable Bheesham Singh Netam P.W. 6. No evidence was led by the appellant.

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4. The prosecution did not tender the report of the Forensic Science Laboratory as evidence under Section 293 Cr.P.C. No mention about the report was to be found in the testimony of either A.S.I. Shri Ashok Dwivedi P.W. 3 or Constable Shri Beheesham Singh Netam P.W. 6. During examination, under Section 313 of Cr.P.C also, no question was put to the accused regarding the report of the Forensic Science Laboratory. Despite there being any legal proof of the report of the Forensic Science Laboratory and also the fact that the independent witnesses had not supported the prosecution story, the learned trial Judge relying upon the testimony of A.S.I. Shri Ashok Dwivedi P.W. 3 convicted and sentenced the appellant as aforesaid in para 1.

5. Shri Arun Kochar, learned counsel for the appellant has argued that there is no legal evidence to show that the substance seized from the appellant was Ganja. He contended that prosecution having failed to tender the report of the Forensic Science Laboratory as evidence as required under Section 293 Cr.P.C., the evidence of A.S.I. Ashok Dwivedi (P.W. 3) it could not form the basis for convicting the accused under Section 20(b)(i) of the Act. It was further argued that since no opportunity was given to the appellant to explain the report of the F.S. L. as an evidence appearing against him, the conviction under Section 20(b)(i) of the Act could not be sustained in the eye of law. He also contended that the evidence led by the prosecution fell short of the requisite proof required for convicting a person under Section 20(b)(i) of the Act since independent

witnesses Chabilal and Santosh P.W. 2 had not supported the prosecution story and mandatory provision of Section 55 of the Act had not been complied with. On the other hand, Shri Ashish Shukla, learned counsel appearing for the State has argued in support of the impugned judgment, though formally.

6. In an offence under Section 20(b)(i) of the Act, severe punishment which may extend up to 10 years and a fine which may also extend up to 1 lack rupees is prescribed. It is therefore the pious obligation, nay, duty of the Court trying offences under the Act to minutely examine whether the mandatory provisions of the Act have been complied with and also whether there was legal proof on record to show that the substance seized from the appellant was Ganja, instead of mechanically recording a convicting and awarding sentence. Regrettably, the learned trial Judge failed in her duty. Although in para 19 of the judgment, the trial Judge has referred to the testimony of A.S.I. Shri Ashok Dwivedi P.W. 3 and mentioned that there was nothing to disbelieve the statement of the witness that the sealed packet of sample had been sent to the Forensic Science Laboratory and a positive report regarding Ganja had been received, yet on a minute perusal of the entire testimony of A.S.I. Shri Ashok Dwivedi P.W. 3, I find that there is no indication whatsoever, in his testimony that either the sample was sent for chemical analysis to the Forensic Science Laboratory or that the report of the Forensic Science Laboratory had been received or had positively

shown that the sample was opined to contain Ganja. It appears that the learned trial Judge perfunctorily observed in para 19 of the judgment without even going through the record once. It is settled law that every piece of evidence that is to be used by the prosecution against the accused should be put to the accused while examining him under Section 313 of Cr.P.C. The learned trial Judge did not even consider it necessary to examine the accused on the report of the Forensic Science Laboratory before using it as evidence against the accused. The approach of the trial Court shocks the judicial conscience of this Court.

7. The record does not show that at any time during trial, the evidence of the Forensic science Laboratory was tendered by the prosecution and was exhibited as evidence as required under Section 293 of Cr.P.C. There is also absolutely nothing in the testimony of A.S. I. Shri Ashok Dwivedi P.W. 3 which would show that he had any reason to believe that the substance seized from the appellant was ganja. The prosecution has therefore failed to establish that the substance alleged to have been seized from the appellant was ganja.

8. Independent witnesses Chabilal P.W. 1 and Santosh P.W.2 did not support the prosecution story. Although seizure memo Ex.P-5 bears specimen impression of the seal used by A.S.I. Shri Ashok Dwivedi P.W. 3, yet the report of the Forensic Science Laboratory does not give any description whatsoever, of the seals found on the 3 packets

which were sent for examination. Seizure memo Ex.P- 5, F.I.R.Ex.P-14 and Malkhana Register Ex.P- 13 (C) do not show that any identification marks were given by A.S.I. Shri Ashok Dwivedi P.W. 3 on the plastic bag or the two samples. Malkhana Register Ex.P.13(C) also does not show that the plastic bag was entrusted in a sealed condition. The testimony of Head Constable Rathram Patel P.W. 4 does not show that as required under section 55 of the Act, before entrusting the aforesaid articles to the safe custody of the Malkhana, the Station House Officer had affixed his seal on the articles so as to prevent any tampering with the samples. From the time of seizure till the time of entrustment to the Malkhana, no identification marks were given on the sample packets as well as the plastic bag. Therefore, no explanation is to be found as to how Packets sent to the Forensic Science Laboratory were found to contain identification marks A, A1 & A2..

9. Although copy of the Malkhana Register Ex.P-13 (C) shows that the specimen impression of the seal used for sealing samples had also been entrusted for safe custody to the Malkhana Moharrir yet the report of the Forensic Science Laboratory does not show that any such seal was either received or was compared by the Forensic Science Laboratory before examining the contents of the packets sent for examination. The record also does not show that the seized articles and the specimen impression of seal were produced before the trial Court.

10. Having considered the evidence led by the prosecution in its entirety, the following points emerge:-

i) The prosecution has failed to establish that the substance seized from the appellant was Ganja since the report of the Forensic Science Laboratory was not tendered in evidence and exhibited and the accused was not given opportunity to explain the same in his examination under Section 313 of Cr.P.C.

ii) In view of the total non-compliance of Section 55 of the Act coupled with the fact that no specimen impression of seal was sent for comparison to the Forensic Science Laboratory, the possibility that the substance examined by the Forensic Science Laboratory was tampered with cannot be ruled out.

iii) Independent witnesses Chabilal P.W. 1 and Santosh P.W. 2 had not supported the prosecution story.

iv) There was absolutely nothing in the testimony of A.S.I. Shri Ashok Dwivedi P.W. 3 to conclude that the substance seized from the possession of the appellant was Ganja.

11. In the above mentioned circumstances, the appeal deserves to be allowed. Conviction of the appellant under Section 20(b)(i) of the Act and the sentence awarded thereunder are set aside. The appellant shall be set at liberty forthwith, if not required, in any other case. Fine, if paid, shall be refunded to the appellant.

Sd-/
Dilip Raosaheb Deshmukh
Judge